

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5200 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

NAZIR AHMED GULAM AHMED MALIK

Appearance:

MR HS MUNSHAW for Petitioner

MR HK RATHOD for Respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 19/02/97

ORAL JUDGEMENT

By this petition, the petitioner corporation had challenged the order and award of the Labour court, Surat passed in Reference (LCR) No. 331 of 1990 on 31.1.1996. By virtue of the impugned award, the respondent is ordered to be reinstated with full back wages and other incidental benefits by allowing the Reference.

There is no dispute about the fact that the respondent was a driver of the petitioner-corporation who was in charge of the bus which met with an accident on 26.6.1988. There was an accident near village Mosali at about 8.30 p.m. in which a motor cyclist lost his life. The S.T. Bus was also damaged. The driver was charged in a departmental inquiry and the petitioner terminated the service of the respondent driver holding him guilty for delinquency in driving the bus rashly and negligently and killing a young man. In view of the rapid increase and rise in the Highway accidents, many persons have been losing their lives. In the accident in question, there was collision between the bus in charge of the respondent and the motor cyclist. The motor cyclist had sustained serious injuries due to which he succumbed to the same instantaneously.

The Labour court, it appears, has set aside the departmental verdict of dismissal from service and has granted reinstatement with full back wages. When the drivers of the vehicles and more so drivers of public utility vehicles commit serious misconduct and resultant crime, cannot be lightly and leniently viewed. The Labour court has committed serious error of law in finding that there was no fault or delinquency on the part of the respondent. The Labour court ought to have taken into account the following facts which are not only relevant but are material and significant in considering the merits of verdict of the departmental dismissal inquiry:

(i) that legality and validity of the departmental inquiry was not challenged before the Labour court.

(ii) that the respondent did not wait, he should have lodged the police complaint and he has not taken any steps for disclosing serious road accident.

(iii) that he has not filed a complaint before the police. He had also not informed the department promptly contrary to departmental rule;

(iv) that the site map ought to have been examined which prima facie suggests that the driver of the bus i.e the respondent and the motor cyclist both were prima facie responsible for emergence of unfortunate road accident.

(v) Had the driver been more careful, he could have avoided the unfortunate road mishap.

(vi) The evidence of the respondent is also not properly appreciated.

(vii) The statement of the driver recorded by the police on 28.6.1988 produced at Annexure A to the petition prima facie goes to show that the respondent was also guilty of rash and negligent driving partly if not wholly. It also transpires from the statement of the respondent that he had to apply brake and there were brake marks on the road and the motor cycle was dashed by the front right side portion of the bus as a result of which, the motor cyclist was thrown away and he succumbed to the injuries. Driver has admitted his wrong.

The aforesaid facts and circumstances do not seem to have been examined and appreciated by the Labour court in its proper perspective while exercising its power under Section 11-A of the IDAct and in displacing and dislodging the verdict of departmental inquiry. It is true that Section 11-A confers very wide discretionary powers so that the Labour court or Industrial court concerned can analyse and appreciate the evidence as appellate court and can also substitute its finding even in case of penalty. However, these powers are required to be exercised judiciously and justly bearing in mind all relevant factors and circumstances. It appears from the record of the present case that the Labour court has failed to appreciate the aforesaid circumstances and the real purport and design of the provisions of Section 11-A of the IDAct. Therefore, instead of entering into merits of this petition, it would be expedient and desirable to remand the matter to the Labour court for fresh consideration and decision on merits after giving opportunity to the parties.

In the result, this petition is partly allowed. The impugned award and order of the Labour court is quashed and set aside. The matter is remanded back to the Labour court for fresh consideration and determination on merits in accordance with law after taking into consideration all the relevant facts and circumstances. Rule is made absolutely to the aforesaid extent, with no order as to costs.
